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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Wittenberg Weiner Consulting, LLC

File: B-413460

Date: October 31, 2016

Lauren G. Wittenberg, Wittenberg Weiner Consulting, LLC, for the protester.
Scott E. Miller, Esq., and Robert Kois, Esq., Department of the Navy, for the
agency.

Paula J. Haurilesko, Esq., and Tania Calhoun, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's use of a lowest-priced, technically-acceptable
evaluation scheme is denied where the record shows that the agency reasonably
exercised its judgment and included in the solicitation provisions to address
concerns raised by the protester.

DECISION

Wittenberg Weiner Consulting, LLC (WWC), of Tampa, Florida, protests the terms
of request for quotations (RFQ) No. N68171-16-T-0092, issued by the Department
of the Navy, Naval Supply Systems Command, for analyst services. WWC
challenges the Navy's use of a lowest-priced, technically-acceptable (LPTA)
evaluation scheme to obtain the required services.¹

We deny the protest.

BACKGROUND

The RFQ was issued as a set-aside for small business concerns holding contracts
under the General Services Administration's Mission Oriented Business Integration

¹ WWC also challenged the terms of other RFQs for analyst services, docketed as
B-413457; B-413458; and B-413459, which we address in a separate, consolidated
decision.

Services (MOBIS) multiple-award schedule. The RFQ contemplates the award of a fixed-price, level-of-effort contract for senior, mid-level, and junior analysts to support Naval Supply Systems Command, Fleet Logistics Center business operations in Sigonella and Naples, Italy, and in Rota, Spain, for a one-year period of performance. Contracting Officer's Statement at 1; RFQ at 3-5.

The RFQ incorporates a performance work statement (PWS) that identifies a variety of tasks to be performed under the contract, such as:

- Creating drafts of new work procedures guides;
- Updating existing departmental instructions, letters of designation and qualifications to ensure that information and references are current;
- Reviewing staffing data for gaps between actual and planned staffing;
- Gathering, evaluating, and analyzing data to support the Fleet Logistics Center business office in financial and administrative projects, operational initiatives, and compliance requirements;
- Developing a Fleet Logistics Center-wide administrative correspondence tracking tool using commercially available software tools, such as Microsoft Excel and Microsoft Access;
- Gathering and analyzing data for monthly fuel expenditures; consolidated reporting of departmental training, staffing, timekeeping, and travel; performance metrics; and satisfying data calls; and
- Preparing management oversight board meeting briefings.

RFQ, PWS, at 5-7.

The RFQ states that a contract will be awarded to the responsible vendor whose quotation is technically acceptable and offers the lowest evaluated price. RFQ at 19. In addition to price, quotations will be evaluated for technical capability and past performance. Id. To be acceptable under the technical capability factor, vendors are required to provide resumes for senior, mid-level, and junior analysts demonstrating that they meet the RFQ's educational and experience requirements. The individual proposed for the senior analyst position is required to have a master's degree and at least five years of professional experience in a business administration, program management, financial, engineering, or accounting discipline, including experience in developing management reports and conducting analyses for management initiatives. Id. at 7. For the mid-level and junior analyst positions, either the college degree or the professional experience must be in one of the above disciplines. Id. Additionally, the RFQ stated that for any individual not currently employed by the vendor, the vendor must submit a contingency hire letter or similar statement signed by the individual indicating an agreement to work in the proposed position. Id. at 17.

For past performance, vendors are required to provide information for no more than three contracts that have the same or similar scope, magnitude of effort or complexity, and which are ongoing or performed within the past three years. Vendors are also advised to discuss any major problems encountered and how they were resolved. RFQ at 18-19.

Prior to the July 27, 2016 closing day and time for receipt of quotations, WWC filed this protest with our Office.

DISCUSSION

WWC maintains that the Navy is improperly using a lowest-priced, technically-acceptable (LPTA) evaluation scheme to obtain the required services. WWC argues that the activities to be performed under the RFQ--creating drafts of new work procedures and gathering and analyzing data--are not the kind of activities that are deemed appropriate in Defense Department directives and memoranda concerning the use of LPTA. WWC contends that the work to be performed is complex, specific to the Navy, and requires the exercise of judgment, and thus an LPTA evaluation scheme is not appropriate. WWC also contends that the Navy's prior use of LPTA has resulted in the selection of vendors that could not provide qualified personnel in the timely manner. Protest at 3.

A contracting agency has the discretion to determine its needs and the best method to accommodate them, and we will not question an agency's determination of its needs unless that determination has no reasonable basis. See Womack Mach. Supply Co., B-407990, May 3, 2013, 2013 CPD ¶ 117 at 3. Disagreement with the agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. Grant Thornton, LLP, B-408464, Sept. 25, 2013, 2013 CPD ¶ 238 at 5.

The Navy states that the work is routine administrative and analytical work that does not require highly specialized knowledge or extensive experience, such as creating drafts; reviewing agency instructions, financial and other data, and performance metrics; developing a handbook and tracking tool; and preparing reports from templates. Contracting Officer's Statement at 2. The agency acknowledges that some past procurements have experienced difficulties, but states that contractors other than WWC have successfully provided analyst services for the Fleet Logistics Center under an LPTA evaluation scheme. Id. at 1. The Navy also states that the RFQ requires resumes, contingency hire letters, and past performance information, that will allow the agency to address the problems that WWC claims resulted from using LPTA in the past. Agency Report (AR) Legal Memorandum at 6.

In our view, the protester has not shown that the agency's judgment is unreasonable. The solicitation appears to address the potential for a vendor's

inability to supply qualified individuals by requiring resumes that demonstrate the necessary educational and experience requirements, as well as some type of commitment on the part of proposed analyst. See RFQ at 7, 17. Similarly, the solicitation requires each vendor to provide past performance information on contracts similar in scope, magnitude, and complexity. To the extent the protester argues that the Navy has not entered negative past performance information related into the Contractor Performance Assessment Reporting System (CPARS), a firm's performance of a contract is a matter of contract administration that is not for our review. 4 C.F.R. § 21.5(a); see ProActive Techs., Inc.; CymSTAR Servs., LLC, B-412957.5 et al., Aug. 23, 2016, 2016 CPD ¶ 244 at 11 n.6 (contents of past performance ratings are matters of contract administration).

With respect to the protester's argument that tasks to be performed under the resulting contract are inappropriate for contract award based on an LPTA evaluation scheme, we find no basis to sustain the protest. The RFQ indicates that the work supports the administrative and business operations of the Fleet Logistics Center, which the Navy states are not complex. For example, as discussed above, the PWS requires the vendor to update existing documents, gather and analyze data related to administrative functions such as staffing, training, and compliance requirements; and prepare briefings. See PWS at 5-7. Although WWC disagrees with the agency's characterization, none of the information provided by the protester demonstrates that the agency's judgment is unreasonable.² Finally, to the extent that WWC argues that the Navy is not complying with Defense Department directives and memoranda, these documents are internal agency policy, rather than mandatory procurement regulations; accordingly, the Navy's compliance with these policies is not subject to our review. Grant Thornton, LLP, supra, at 5 n.4.

The protest is denied.

Susan A. Poling
General Counsel

² We note that the protester submitted a statement from a Naval officer who disagreed with the agency's judgment. Protester Comments, Exh. 2A, Capt. B. We find his statement unpersuasive.